

Office of Chief Counsel
Internal Revenue Service

memorandum

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date: June 23, 2000

to: Carlinda Lofton
Manager, Technical Unit I and II
Examinations-ATSC
P.O. Box 47-421
Doraville, Georgia 30362

from: District Counsel, Georgia District, Atlanta

subject: Assistance/Approval of Form 872-P Language for TEFRA Partnership
Taxpayer: [REDACTED]
EIN: [REDACTED]
Taxable Year: [REDACTED]
SOL: [REDACTED]

This is in response to your memorandum dated June 19, 2000, wherein you requested that we review a proposed Form 872-P with restrictive language from a legal standpoint. We have reviewed your proposed Form 872-P. The restrictive paragraph that you have used in the Form 872-P should only be used with a Form 872; for a partner not a partnership. Because your Form 872-P is being prepared for a partnership, the paragraph that you have inserted is inappropriate and should be stricken. For your purposes you can use a Form 872-P with no restrictive language or changes.

Our advice is based on the following factual scenario. The taxpayer is a partnership and has approximately [REDACTED] partners including other partnerships. The taxpayer is a partner in a partnership ([REDACTED]) that was audited and "no changed" for the taxable year [REDACTED]. [REDACTED]'s tax matters partner signed a consent extending the statute for that year to [REDACTED]. The taxpayer received a Form K-1 with a \$ [REDACTED] flow through loss from [REDACTED], but claimed a \$ [REDACTED] loss (allegedly because of a transposition error). The taxpayer's controller agrees that the loss claimed was excessive, in the amount of \$ [REDACTED], and should be adjusted.

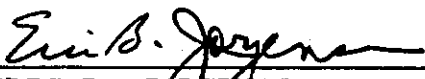
The CPA firm that prepared the taxpayer's [REDACTED] return claimed that they had reduced a flow through loss to the taxpayer from the partnership ([REDACTED]) from \$ [REDACTED] to \$ [REDACTED] for the taxable year [REDACTED] to adjust for the error on the taxpayer's [REDACTED]

taxable year [REDACTED] to adjust for the error on the taxpayer's [REDACTED] partnership tax return. You have determined that this is unacceptable and that the loss must be correctly reported by the taxpayer in the taxable year [REDACTED]

In order to complete the adjustments to the returns of the taxpayer's [REDACTED] partners, including partnerships, you need another six months. Therefore, you propose that the taxpayer extend the statute to [REDACTED]. One way to extend the statute would be to have the partnership ([REDACTED]), of which the taxpayer is a partner, sign a Form 872-P. The other way would be to have the taxpayer sign a Form 872-P which you propose to do. If the taxpayer requests it, restrictive language limiting the extension to the flow through adjustment from the partnership ([REDACTED]) could be inserted in the Form 872-P. Due to the short time period and the fact that the taxpayer has not made such a restrictive request, we would not insert such a restriction.

As you know, the taxpayer's tax matters partner needs to sign the Form 872-P. If the taxpayer's tax matters partner is in fact another partnership then that partnership's tax matters partner would sign the Form 872-P. Based on Tax Court decisions, you can have the taxpayer's general partner sign the consent if the taxpayer's general partner can be determined.

We have discussed this matter with attorney Ron Buch of the Procedural Division of our National Office and he is in agreement with our advice. We are closing our file in this matter. If we can be of assistance, the undersigned may be contacted at (404) 338-7945.


ERIC B. JORGENSEN
Senior Attorney

cc: CATS
cc: Assistant Chief Counsel (Field Service)
cc: Assistant Regional Counsel (Tax Litigation)